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PATENT

Attorney's Docket No. 5718-34(35718/174234)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Mahajan et al. Confirmation No.: 9734  
Appl No.: 09/236,995 Group Art Unit: 1636  
Filed: January 26, 1999 Examiner: K.T. Katcherer  
For: POLY ADP-RIBOSE POLYMERASE GENE AND ITS USES

January 31, 2002

Commissioner for Patents  
Washington, DC 20231

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RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action dated December 31, 2001, in which the Examiner has required restriction between Group I, namely claims 1-20; and Group II, namely claims 21-23. Applicant hereby provisionally elects with traverse to prosecute the claims of Group I (claims 1-20) and expressly reserves the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims.

Group I is drawn to novel nucleic acid molecules, expression constructs, host cells, transformed plants and plants cells comprising the claimed nucleic acid molecules. It is submitted that the search to determine the patentability of the claimed nucleic acid molecules is essentially the same search that would be required for Group II (claims 21-23) drawn to methods for modulating the metabolic state of a plant cell.

The methods of Group II specifically recite the same nucleic acid molecules set forth in Group I. 37 CFR §1.142 requires that the inventions be "independent and distinct." According to MPEP 802.01, "independent" requires that there is no disclosed relationship between the two

or more subjects disclosed. The relationship of Groups I and II does not meet this standard. In fact, the nucleic acid molecules recited in the claims of each group are identical. Therefore, it is requested that the Examiner reconsider and examine Groups I and II together.

It is further submitted that the search for Groups I and II will focus on the nucleotide sequences. MPEP 803 sets forth that "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Applicants submit that the consideration of Groups I and II together will not be a burden on the Examiner. The issues surrounding each group of claims are essentially the same and thus should be considered together.

For these reasons, it is requested that the Examiner reconsider and examine Groups I and II together.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned agent so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of

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this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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<b>CUSTOMER NO. 00826</b> <b>ALSTON &amp; BIRD LLP</b> Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260	<b>CERTIFICATE OF MAILING</b>  I hereby certify that this correspondence is being deposited with the United States Postal service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Washington, DC 20231 on January 31, 2002.  <i>Nora C. Martinez</i> Nora C. Martinez
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